

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-cv-1319

TODD DYER,

Defendant.

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**STATUS REPORT**

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Pursuant to the Court's July 2, 2021 Order, the parties provide this status report concerning potential hearing dates in this matter.

**I. The Parties Efforts to Identify a Hearing Date**

Since the March 23, 2021 hearing in this matter, the parties have exchanged multiple communications concerning a potential hearing date in this matter, including the following:

- On March 29, 2021, counsel for the United States contacted counsel for Dyer to check on potential hearing dates. Counsel for Dyer indicated that he had conferred with his client following the hearing and that at that time he was considering the weeks of June 7 or 14<sup>th</sup> as potential hearing dates. During a telephone conference in follow up to this email communication, counsel for Dyer indicated that he would need to confer with his client further to identify potential hearing dates.
- On April 14, 2021, counsel for the United States contacted counsel for Dyer to determine whether potential hearing dates had been identified. Counsel for Dyer responded that he was planning a video conference with his client that week, and that he had not been able to arrange for an in-person visit with Dyer despite his efforts to do so.
- On May 12, 2021, counsel for the United States contacted counsel for Dyer regarding the status of his efforts to identify potential hearing dates. Counsel for Dyer responded that he had attempted to confer with his client via Zoom but that the virtual format was not practicable. Counsel for Dyer indicated that he was still attempting to find ways to arrange for an in-person visit with his client. Counsel

for Dyer also indicated that he wanted to take a video deposition of a witness with health issues in advance of the hearing.

In addition to the above email exchanges, counsel for the parties have had multiple telephone conferences to discuss the timing and duration of the hearing and related matters. As indicated at the March 23, 2021 hearing, the United States' position has consistently been that it is ready to attend the hearing as soon as the Court's schedule permits.

## **II. Pending Matters Potentially Affecting Scheduling**

On June 29, 2021, Dyer filed a motion for an Order for Writ of Habeas Corpus Ad Testificandum pursuant to 28 U.S.C. § 2241(c)(5). The United States opposes that motion, for the reasons stated in its opposition on file. The Court's disposition of this motion could potentially have a significant impact on scheduling, as it is unclear how long it would take the Bureau of Prisons to arrange and accomplish the transfer, or whether such a transfer could be arranged on one of the dates proposed by the parties below.

## **III. Parties' Positions Concerning Duration of the Hearing**

The parties disagree on the anticipated duration of the hearing.

The United States believes that the hearing should take no more than 2 to 3 hours. The United States' position is that the only matter of fact to be addressed at the hearing is whether Dyer's conduct constitutes "harassment" within the meaning of 18 U.S.C. § 1514; that is, whether his conduct (1) causes substantial emotional distress in the identified victims; and (2) serves no legitimate purpose. The United States has identified three witnesses it intends to present at the hearing—all of whom are victims as identified in the judgments in Case Nos. 15-CR-115 and 16-CR-100—who will testify as to whether Dyer's conduct caused them substantial emotional distress. Further, the United States' position is that Dyer's harassment of the victims stems from claims that conflict directly with his guilty pleas in Case Nos. 15-CR-115 and 16-CR-100, and that

he must be prohibited from presenting evidence or cross-examining witnesses on matters that conflict with the factual bases of his guilty pleas.

Dyer's position is that the hearing should be scheduled for two full days. Dyer is not yet sure at this time what witnesses he intends to present at the hearing, but he intends to get that question resolved this month.

#### **IV. Proposed Hearing Dates**

Subject to the considerations summarized above, the United States and Dyer propose that the hearing be held on any date(s) between October 18 and November 5, 2021.

Dated this 16<sup>th</sup> day of July, 2021.

For the Plaintiff:

RICHARD G. FROHLING  
Acting United States Attorney

By: *s/ Emily A. Constantine*

EMILY A. CONSTANTINE  
Assistant United States Attorney  
Wisconsin Bar No.1087257  
Office of the United States Attorney  
Eastern District of Wisconsin  
517 East Wisconsin Avenue, Room 530  
Milwaukee, WI 53202  
Telephone: (414) 297-1700  
Fax: (414) 297-4394  
[emily.constantine@usdoj.gov](mailto:emily.constantine@usdoj.gov)

For the Defendant:

Penegor & Lowenberg Law Offices

By: *s/ Robert J. Penegor*

ROBERT J. PENEGOR  
Wisconsin Bar No.1010979  
1665 West Bluemound Road, Suite 270  
Brookfield, WI 53005  
(262) 786-3522  
Email: [Robert@penegorlaw.com](mailto:Robert@penegorlaw.com)